BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate Distributed Generation in Hawaii	)	DOCKET NO. 03-0371

DIVISION OF CONSUMER ADVOCACY'S COMMENTS ON HECO'S MOTION FOR CLARIFICATION AND/OR PARTIAL RECONSIDERATION OF DECISION AND ORDER NO. 22248

I. BACKGROUND.

On January 27, 2006, the Commission issued Decision and Order No. 22248 ("D&O 22248") in the above docketed matter. On February 8, 2006, pursuant to Sections 6-61-137 and 6-61-41 of the Commission's Hawaii Administrative Rules of Practice and Procedure, Title 6, Chapter 61 of the Hawaii Administrative Rules, Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO") (collectively referred to as the "Companies") timely filed a motion to enlarge the time to file a Motion for Clarification and/or Motion for Reconsideration of D&O 22278 ("Motion").[1] Order No. 22283 filed on February 13, 2006 granted the Companies' request for enlargement of time to file the Motion. On March 1, the Companies filed the Motion. On March 7, the Commission filed Order No. 22810 informing the parties to the proceeding that the

[1] The request would extend the filing date from February 8, 2006 to March 1, 2006.

parties had until March 22, 2006 to file comments on the Companies' Motion. The Consumer Advocate provides the following comments.

II. DISCUSSION.

The Companies request clarification and or partial reconsideration of D&O 22248 for the following:

- the conditions that a regulated utility must meet for utility ownership of customer-sited DG; and
- the applicability of D&O 22248 to renewable forms of DG.[2]

The Companies state, however, that the relief requested can be accommodated within the four corners of D&O 22248. The Consumer Advocate agrees.

A. CONDITIONS APPLICABLE TO REGULATED UTILITY OWNERSHIP OF CUSTOMER-SITED DG.

For utility owned customer-sited DG, the D&O 22248 requires the utility to demonstrate in an application to be filed with the Commission the following:

- that the distributed generation resolves a legitimate system need;
- that the distributed generation proposed by the utility is the least cost alternative to meet that need; and
- that in an open and competitive process acceptable to the commission, the customer-generator was unable to find another entity ready and able to supply the proposed distributed generation service at a price and quality comparable to the utility's offering.[3]

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2 Motion, at 2 and Memorandum in Support of Motion ("Memorandum"), at 1.

3 See D&O 22248, at 22-23.

1. Clarification as to what constitutes a "system need."

In its Motion, the Companies request Commission confirmation that the "system need" criteria can be met by a showing that the utility-owned DG:

- provides additional electrical generation capacity;
- deploys certain facilities such as lines and transformers, on the transmission system and distribution system, which may be needed to avoid overloads, under contingency and projected peak conditions;
- reduces system transmission and distribution line losses and providing voltage support;
- improves system energy efficiency; and
- increases use of renewable energy technologies in order to reduce the burning of fossil fuels and meets renewable energy portfolio standard ("RPS") requirements.[4]

The Consumer Advocate supports the request and agrees that the conditions set forth above may support a finding that the utility-owned customer sited DG fulfills a "system need." It is important to note, however, that the evaluation as to whether a specific proposed utility-owned DG project meets the "system need" criteria must be based on the specific information presented in the application to be filed with the Commission seeking approval to proceed with such project. The review should also consider any additional guidelines that may be established by the Commission in the future. Thus, the Commission should only provide the confirmation requested by the Companies that the above may support a finding that the utility-owned customer sited

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[4] Memorandum, Section I. A., at 3–4.

DG project fulfills a "system need" and reiterate the utility's responsibility to demonstrate that the proposed project meets this criteria.

2. Clarification that "least cost" means "lowest reasonable cost."

In its Motion, the Companies request clarification that the "least cost" criteria means "lowest reasonable cost," which is the IRP planning standard established by the Commission for Hawaii.[5] The Consumer Advocate supports the request and believes that the Commission intended to utilize "lowest reasonable cost," as opposed to "least cost" as the planning standard criteria for evaluating utility ownership of customer-sited DG.

3. Clarification as to what may constitute an open and competitive process.

The Companies request clarification as to the applicability of this criterion.[6] The Companies believe that the criterion should not be required in situations where the primary purpose of the DG project is meant to serve utility system needs, and where, but for the utility's system need for the installation of the DG project, the customer would not have installed the DG on the customer's premise.

It appears that the Commission intended to require the utility to demonstrate that all four criteria were met as a requisite to proposing a utility-owned customer sited DG project. Thus, determinations as to whether an exemption from any of the four criteria is reasonable (e.g., the competitive process) for a specific DG project should not be made

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5 See Motion, Section I.B. at 4-5.

6 See Motion, Section I.C. at 5-6.

in the context of the instant proceeding. Rather, any exemptions should be based on specific facts supporting the proposed DG project. The utility must demonstrate why the utility-owned customer sited DG is appropriate, either because the proposed project meets all four criteria, or should be exempt from any of the criteria in the application seeking Commission approval to proceed with such DG project. In approving or denying the request set forth in such application, the Commission can determine whether the requested exemption is reasonable based on the specific facts supporting the request. The Commission should not grant, on a generic basis as requested by the Companies, any exemptions from the four criteria in the context of the instant proceeding.

The Companies suggest a "possible" process that "may" satisfy the requirement when applicable. If the Companies are merely seeking guidance on a possible process, such as whether the suggested process would be appropriate, as opposed to the adoption of the process, the Consumer Advocate does not oppose the Companies' request for guidance. If, however, the Companies are requesting Commission approval of the proposed process offered by the Companies, the Consumer Advocate does not support granting such approval at this time.

The Consumer Advocate agrees that more guidance as to possible actions that can be taken to satisfy the competitive procurement criteria is required. It is important to note, however, that the demonstration illustrating the competitive process considered by the customer before considering to pursue a utility-owned DG system should be presented in the application seeking Commission approval of such DG project.

B. CLARIFICATION AS TO THE APPLICABILITY OF D&O 22248 TO RENEWABLE FORMS OF DG.

The Companies seek clarification as to how certain elements of D&O 22248 are to apply to renewable forms of DG. In this regard, the Companies describe its plans to consider purchasing PV systems at customer sites "in the interests of promoting the technology, stimulating the market, and complying with state renewable portfolio standards ("RPS") requirements." The Companies request affirmation that the D&O 22248 criteria governing regulated utility ownership of customer-sited DG could support such a utility purchase of customer PV systems, provided that: (a) the addition of renewable energy is considered a legitimate system need, (b) meets the "lowest reasonable cost" standard based on a portfolio approach, and (c) special consideration is given to the fact that "the utility would be providing inherent value to PV DG developers and market players rather than competing with them to offer DG services."

Once again, the Consumer Advocate notes that the proposal conceptually appears reasonable. However, any Commission determination that the purchase of a specific renewable DG system is reasonable, should only be made after completing the review of the application to be filed with the Commission seeking approval to acquire such system, rather than in the context of a D&O in the instant proceeding. This will allow the Commission and opportunity to consider the specific facts supporting the utility-owned customer sited DG project. As the Companies note, the burden is on the utility to demonstrate that the utility-owned customer sited DG project is reasonable in the application to be filed with the Commission seeking approval for such DG project.

1. Appropriateness of treating renewable dg systems differently in the companies' standby rate tariffs.

To the extent that the Companies' intentions are directed to net metering installations that, by statute are not subject to standby charges, the Consumer Advocate agrees with the Companies' request for clarification. The Consumer Advocate notes, however, that it is premature to determine what should or should not be subject to the standby tariff without reviewing the proposals to be set forth before the Commission. Thus, the Consumer Advocate recommends that any determination as to what should or should not be subject to the standby tariffs should only be made after the tariffs are filed and the parties are able to review the specifics of such tariff. The Commission should not approve the Companies' request in the context of the instant proceeding.

2. Discussion of additional points of clarification requested by the Companies.

The Companies request clarification as to whether a portfolio perspective may be used to determine whether the "system need' criteria is met by a specific DG project. The reason for the Companies' suggested portfolio approach is because a single DG project by itself may not be sufficient to address a "system need." Collectively, however, several DG projects may provide sufficient generation to satisfy the criteria.

The Consumer Advocate concurs with the Companies' concern and notes that it may be appropriate to consider DG projects considered in an aggregated fashion when considering such system needs are met as well as when determining whether a project is cost-effective and the "lowest reasonable cost" solution.

3. Clarification of the additional points concerning D&O 22248—Section III of the Companies' Motion.

The Consumer Advocate contends that it is premature to provide the requested clarification on the matters discussed in Section III of the Companies' Motion. Any determination on each of the matters can not be done without knowing the specific facts under which the proposals will be made. Thus, as noted by the Companies in their Motion, the utility has the burden of demonstrating the reasonableness of a proposed utility-owned customer-sited DG system in the application to be filed with the Commission seeking approval of such DG project. The following is a brief discussion of the reasons as to why the Commission should not provide the requested clarification at this time.

a. Whether consideration should be given to DG size.

The Companies argue that if generic restrictions are placed on the utility's ability to offer utility-owned DG, then those restrictions should not be applicable to large DG applications. The Consumer Advocate contends that it is difficult to assess at this time what constitutes a "large" DG applications for the same reason that the Consumer Advocate contended that "small" could not be determined on a generic basis. Rather, any determination as to what constitutes a "large" or "small" DG project must take into consideration the size of the utility system serving the customers on each of the Hawaiian islands.

Thus, the demonstration as to whether the conditions for allowing a utility-owned customer-sited DG project are met, or whether the proposed DG project is appropriately exempt from any condition(s), must be made in the specific application seeking

Commission approval to install the specific DG project. In this manner, the size of the DG project can appropriately be determined after consideration of the specific facts and circumstances supporting the proposed DG project.

b. Whether the requirements are to be applied prospectively.

It is reasonable to assume that the Commission will not apply the conditions to systems that are already in place. It must be recognized, however, that without any time period for transition, any applications to be filed with the Commission will be required to demonstrate the extent to which the conditions set forth in D&O 22248 are met. In the alternative, if an exemption is being requested, the utility should explain the basis for such exemption by presenting the specific facts and circumstances giving rise to the request. At that time, the Commission can appropriately grant, or deny the request for exemption. To provide such guidance at this time without setting forth any definitive guidelines as to any transitional period, if there is to be one, would not be reasonable.

c. Whether distinctions should be made between the types of DG application.

The Companies contend that they are examining the feasibility of a dispatchable standby generation ("DSG") program similar to that established by tariff in Portland General Electric Company's ("PGE") service territory. Furthermore, the Companies state that they may consider offering an emergency generator service, such as those approved by the regulatory commissions in North Carolina, Florida and Wisconsin. Finally, the Companies request clarification that the customers using such a tariffed

service would not be expected to first seek to competitively procure the emergency generator from third parties.

The Consumer Advocate contends that without knowing the particulars and specifics of each such proposal, or whether the Companies will even pursue such measures, the Consumer Advocate is unable to comment on whether the request for clarification is reasonable. The Consumer Advocate contends that the appropriate time to provide such comment is in the Statement of Position to be filed in the docket opened to address applications to be filed by the utility seeking Commission approval to implement such programs. At that time, the Companies have the burden of demonstrating the reasonableness of the programs and the Consumer Advocate will have an opportunity to review and recommend to the Commission whether approval should be granted.

In summary, the Consumer Advocate concurs with the Companies' request for:

- confirmation as to the factors that may support a showing that the utility-owned customer sited DG project supports a "system need;"
- clarification that "lowest cost" was intended to mean "lowest reasonable cost" consistent with the IRP planning standard established by the Commission;
- clarification as to what may constitute an open competitive process; and
- confirmation that when evaluating a specific utility-owned customer-sited DG project, an aggregate approach is reasonable.

The Consumer Advocate does not, however, support a Commission finding in the instant proceeding that:

- any specific types of utility-owned customer sited DG project may be exempt from any of the four conditions set forth in D&O 22248;
- the suggested competitive process will be adopted;

- any specific type of renewable DG project can be acquired by the Company without a demonstration that the four conditions are met, or without a showing that an exemption from any of the four conditions is reasonable; and

- it is reasonable to treat renewable DG projects differently for purposes of applying the standby tariff.

DATED: Honolulu, Hawaii, March 22, 2006.

Respectfully submitted,

By Cheryl S Kikuta
CHERYL S. KIKUTA
Utilities Administrator

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S COMMENTS ON HAWAIIAN ELECTRIC COMPANY, INC.'S MOTION FOR CLARIFICATION AND/OR PARTIAL RECONSIDERATION OF DECISION AND ORDER NO. 22248** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

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